ATTORNEY FOR APPELLANT:

ALISON T. FRAZIER
Madison, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

JESSICA A. MEEK
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JOCKO DEAN DAVIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 39A05-0710-CR-559
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JEFFERSON SUPERIOR COURT
The Honorable Fred H. Hoying, Judge
Cause No. 39D01-0606-FB-640

MAY 1, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

Jocko Dean Davis appeals the four-year advisory sentence imposed after he pleaded guilty to sexual misconduct with a minor as a class C felony. We affirm.

The sole issue for our review is whether the trial court erred in sentencing Davis.

At a May 6, 2006, party, twenty-one-year-old Davis engaged in sexual conduct with an intoxicated fourteen-year-old, H.V. The State charged Davis with sexual misconduct with a minor as a class B felony. Davis pleaded guilty to sexual misconduct with a minor as a class C felony in exchange for the State's dismissal of the class B felony charge. There was no agreement on sentencing. Following a guilty plea hearing, the trial court found that Davis' family support as well as his insignificant criminal history[1] were mitigating factors. The court found no aggravating factors, and sentenced Davis to the four-year advisory sentence for a class C felony. Davis appeals.

The sole issue for our review is whether the trial court erred in sentencing Davis. At the outset, we note that because the offense in this case was committed after the April 25, 2005, revisions to the sentencing statutes, we review Davis' sentence under the advisory sentencing scheme. *Anglemeyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007). When evaluating sentencing challenges under the advisory sentencing scheme, we first confirm that the trial court issued the required sentencing statement, which includes a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* at 490. If the recitation includes a finding of aggravating or mitigating circumstances, the statement must identify all significant mitigating and aggravating

[1] Although Davis had a prior conviction for public intoxication in 2005, the trial court found that Davis' prior criminal history was insignificant.

circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id.*

So long as the sentence is in within the statutory range, it is subject to review only for abuse of discretion. *Id.* An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. *Id.* Another example includes entering a sentencing statement that explains reasons for imposing a sentence, including aggravating and mitigating factors, which are not supported by the record. *Id.* at 490-91.

Because the trial court no longer has any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion in failing to properly weigh such factors. *Id* at 491. This is so because once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then impose any sentence that is authorized by statute and permitted under the Indiana Constitution. *Id.*

This does not mean that criminal defendants have no recourse in challenging sentences they believe are excessive. *Id.* Although a trial court may have acted within its lawful discretion in determining a sentence, Appellate Rule 7(B) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds that the sentence is inappropriate in light of the nature of the offense and the character of the

offender. *Id.* It is on this basis alone that a criminal defendant may now challenge his sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing the particular sentence that is supported by the record, and the reasons are not improper as a matter of law. *Id.*

Here, Davis contends that trial court overlooked the mitigating factor that he pleaded guilty. However, a guilty plea does not automatically amount to a significant mitigating factor. *Sensback v. State,* 720 N.E.2d 1160, 1165 (Ind. 1999). For example, a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead is merely a pragmatic one. *Wells v. State,* 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied*. Here, the State dismissed a B felony against Davis and refiled the charge as a class C felony. In light of this substantial benefit to Davis, we find no error in the trial court's failure to find the guilty plea as a mitigating factor.

Davis further contends that the trial court erred in imposing a four-year sentence based upon two mitigators and no aggravators. In support of his contention, Davis directs us to *Laughner v. State,* 769 N.E.2d 1147 (Ind. Ct. App. 2002), *Eaton v. State,* 825 N.E.2d 1287 (Ind. Ct. App. 2005), and *Hughes v. State,* 872 N.E.2d 180 (Ind. Ct. App. 2007). None of these cases, however, are instructive because they were all decided under the prior presumptive sentencing scheme. Rather, to the extent that Davis is challenging the trial court's weighing of the aggravators and mitigators, this argument is not available under the advisory sentencing scheme. Davis' sole available challenge is to the appropriateness of his sentence.

When reviewing a sentence imposed by the trial court, we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(b). Here, with regard to the character of the offender, Davis has a prior conviction for public intoxication in 2005, one year before he committed the offense in this case. Davis' prior contact with the law did not cause him to reform himself. With regard to the nature of the offense, 5'10", 380-pound Davis engaged in sexual contact with a 14-year-old intoxicated girl who had apparently passed out. Based upon our review of the evidence, we see nothing in the character of this offender or in the nature of this offense that would suggest that Davis' four-year advisory sentence is inappropriate.

Affirmed.

ROBB, J., and MAY, J., concur.